

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed August 4, 2009. At the time of the Final Office Action, Claims 10, 12-17 and 19-23 were pending in this Application. Claims 10, 12-17 and 19-23 were rejected. Claims 14-16 and 20-22 have been amended to correct an obvious typo. Claims 1-9, 11, 18 and 24 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 14-17 and 20-23 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. As correctly analyzed by the Examiner and, Claims 14-16 and 20-22 each included an obvious typo as they included the same action on different alternatives. The Examiner did correctly interpret the intended meaning of these claims. Applicants now amend Claims 14-16 and 20-22 to correct these obvious typos.

Rejections under 35 U.S.C. § 102

Claims 10, 12-17 and 19-23 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,345,916 issued to Amann et al. ("*Amann*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as

anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

The Examiner stated that Applicant allegedly defined the term "gradient" as a change in pressure values. Supporting this conclusion, the Examiner cited to the specification, paragraph [0024]. Applicant respectfully disagrees. A person skilled in the art would not draw such a conclusion. Moreover, the cited paragraph does clearly not support the Examiner's conclusion.

Paragraph [0024] of the specification states:

"The gradient, which is also known as the time derivative, can be determined by means of any approximation method. It is most easily determined as a function of two consecutive actual fuel pressure values FUP_AV."

Thus, the specification neither states nor suggests that a mere change in the pressure values defines the gradient. Rather, the specification clearly states that the gradient is the time derivative as well known in the art. Hence, Applicant does not give this term a new meaning. Moreover, Applicant states that an approximation method can be used to determine the time derivative. However, this does not mean that a mere change in the pressure values defines the gradient. Rather, the specification clearly states that the gradient can be most easily defined as a function of two consecutive actual fuel pressure values. Hence, there is still a function involved which determines the gradient. Thus, the present independent claims still require that a gradient, i.e. the time derivative, is determined by a function. In a most easy way this function can only use two consecutive values. Nevertheless, this function still at least approximates the gradient proper.

Amann neither discloses nor suggests to determine a gradient of flow rates. The fact that *Amann* monitors the flow rates does not imply that *Amann* determines the gradient by any means. No disclosure of such a determination or an approximation of such a determination can be found in *Amann*. Hence, *Amann* cannot anticipate the present independent claims. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims.

Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.


CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512-457-2000.

Respectfully submitted,
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